IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.M 83 of 2005
in
FAMILY COURT APPEAL NO.116 OF 2002

Smt. Indumati R. Deo ..Applicant.

Versus

Arun Kashinath Deshpande ..Respondent

Mr.Abhay Khandeparkar i/b. Shilpa Joshi for the applicant

Mr.P.S.Dani for the respondent

WITH

Civil Application No.M 179 of 2003
in
FAMILY COURT APPEAL NO.116 OF 2002

Arun Kashinath Deshpande ..Applicant

versus

Smt.Indumati R. Deo ..Respondent

Mr. P.S.Dani for the applicant.

Mr.Abhay Khandeparkar i/b. Shilpa Joshi for the respondent.

CORAM: S.B.MHASE &
S.R.SATHE, JJ.

DATE : 5th July, 2005

P.C.

1. Heard.

2. Civil Application No.83 of 2005 has been filed by the Respondent-wife in Family Court Appeal 116 of 2002 claiming withdrawal of RPS.36,000/- which were deposited by way of maintenance in the Trial Court. Civil Application No.179 of 2003 has been filed by the husband-Appellant in Family Court Appeal No.116 of 2002 claiming that pending the hearing and final disposal of the Family Court Appeal all further proceedings and Execution Petition No.99 of 2000 be stayed. In accordance with that this Court has passed ad-interim order on 17.11.2003 and granted ad-interim relief in terms of prayer clause (a). At that time the condition to deposit Rs.36,000/- has been imposed.

3. The main appeal is directed as against a proceeding arising from Section 25 of the Hindu Marriage Act. Permanent Alimony was granted in P.A.No.431 of 1990 and was enhanced in P.A.No.764 of 1995. However, the Petition No.77 of 2001 and Petition No.7 of 2001 have been filed by the Appellant husband for cancellation of the said orders granting permanent alimony. The Trial Court has allowed the application and has cancelled the order of permanent alimony w.e.f. 29.6.2001 after having recorded the finding that fraud has been committed. The grievance of the learned Counsel Mr. Dani is that if the fraud is proved, the

cancellation should be effected from the date of the fraud and since such retroactive order has not been passed by the Family Court, the husband has preferred this appeal. From this submissions and from the order of the Trial Court, the dispute about permanent alimony and fraud is reflected it is required to be admitted in the First Appeal since there is no counter Appeal. Under these circumstances, it would be inappropriate on the part of this Court to release the amount of Rs.36,000/- which was directed to be deposited by this Court in view of the Order passed in Civil Application No.179 of 2003 and therefore the Civil Application No.83 of 2005 filed by the wife is hereby rejected.

4. Civil Application No.179 of 2003 is made absolute in terms of prayer clause (a). The amount of Rs.36,000/- which has been deposited shall remain with the Trial Court till the final disposal of this appeal.

5. Both the Civil Applications stand disposed off accordingly.

(S.R.SATHE, J.) (S.B.MHASE,J.)